

Office of the Secretary, Interior

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U.S. Department of the Interior, Washington, DC 20240.

(b) *Form of requests.* (1) Requests under this subpart shall be in writing and must specifically invoke the Act.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall—

(A) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see § 2.20(b) through (e) for definitions) and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 2.20 (f) and (g), the time for responding to requests may be delayed—

(A) If a requester has not sufficiently identified the fee category applicable to the request,

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Department or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend

“FREEDOM OF INFORMATION REQUEST.”

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

[52 FR 45586, Nov. 30, 1987, as amended at 67 FR 4368, Jan. 30, 2002]

§ 2.15 Preliminary processing of requests.

(a) *Scope of requests.* (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head or bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the bureau FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) *Intradepartmental consultation and referral.* (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession

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that originated with or are of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17.

(c) *Records of other departments and agencies.* (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless—

(i) The record is of primary interest to the Department,

(ii) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to the Act.

The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever—

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a

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place reasonably calculated to accomplish notification.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(f).

(4) Notification to a submitter is not required if:

(i) The bureau determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);

(iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

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(5) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 2.16 Action on initial requests.

(a) *Authority.* (1) Requests to field installations shall be decided by the head of the installation or by such higher authority as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedures for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(3) If a claim of confidentiality has been found frivolous in accordance with § 2.15(d)(4)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A reference to the specific exemption or exemptions authorizing the withholding;

(ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;

(iii) A listing of the names and titles or positions of each person responsible for the denial; and

(iv) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

§ 2.17 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 10 working day time limit begins to run when a request meeting the requirements of § 2.14(b) is received at a